IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2141 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE STORE KEEPERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR BP TANNA for Petitioners.

Mr. B.Y. Mankad, AGP for Respondents.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 05/04/2002

ORAL JUDGEMENT

The petitioners, in this petition under Article 226 of the Constitution of India, have challenged the Resolution dated 26.2.1992 passed by the Roads & Buildings Department, Government of Gujarat, Gandhinagar,

and have also sought for directions to the respondents No. 1 to 4 not to change the nomenclature of the post of the petitioners from Storekeeper to Senior Clerk (Stores) with respondents No. 1 to 3 and further direction for not making any change or transfer of Senior Clerks to the cadre of Storekeeper or Senior Clerk (Stores) in any of the departments under respondents No. 1 to 3.

2. Initially, this Court had issued notice and by way of ad-interim relief the respondents were restrained from transferring or appointing Senior Clerks of common cadre as Storekeeper/Senior Clerk (Stores) till 3.4.1992. The petition was thereafter admitted on 3.4.92 and ad-interim relief granted earlier was continued till further orders.

3. The petitioners' main challenge in the present petition is against the order dated 26.2.1992 under which the nomenclature was changed and the effect brought by the said change. According to the petitioners, the effect of the change was that Senior Clerk who had not opted for the post of Storekeeper and who is on the post of Storekeeper would be working as Storekeeper while the persons like the petitioners and similarly situated persons who had exercised their option to work as Storekeeper would face injustice. It is the grievance of the petitioners that the nomenclature was changed by the High Level Committee which was not within the purview of the said Committee.

4. The petitioners have submitted in the petition that a communication was issued by the Under Secretary, Panchayat, Housing & Urban Development Department to the District Development Officer, Savarkundla on 28.1.97 wherein it was stated that the Storekeeper could not be transferred as Senior Clerk and Senior Clerk could not be transferred as Storekeeper. The petitioners have further submitted that the Government of Gujarat has issued a Resolution on 11.4.98 and it was made clear that the Government would permit the persons who were initially recruited as Junior Clerk or Senior Clerk to come to the post of Senior Storekeeper and they were also eligible to the promotion in which they were before giving their option for going to the cadre of Storekeeper. On the basis of this, it was submitted on behalf of the petitioners that once the option was given for the post of Storekeeper and after accepting their options and appointing them as Storekeeper intimating them clearly that now they cannot have any right on the cadre of Junior Clerk or Senior Clerk now the respondents cannot

act arbitrarily. The respondents have thereafter admitted that once the option is exercised and an employee has accepted it becomes final and it cannot be disturbed subsequently.

5. The petitioners have further submitted that at the time of inviting the options the Government had put certain conditions with regard to promotion, transfer etc., for filling up of available posts of Junior Clerks and Senior Clerks and now the Government has come with the notification whereby the post of Storekeeper is redesignated as Senior Clerk. Such a decision is arbitrary and not within the powers of the High Level Committee and such decisions were taken arbitrarily. It is further submitted that the action taken by the respondents in issuing the aforesaid resolution is clearly in violation of Articles 14 & 16 of the Constitution of India and it is required to be quashed and set aside.

6. I have heard Mr. Tanna, ld. advocate for the petitioners and Mr. Mankad, ld. AGP for the respondents. I have also gone through the pleadings and documents attached with the petition. As far as the challenge to the resolution dated 26.2.1992 is concerned, I do not find much force in the submissions made on behalf of the petitioners, except with regard to item No.2 whereby the nomenclature of Storekeeper was changed to Senior Clerk (Stores). Even while granting interim relief, this Court has not granted any stay against the operation of the entire resolution dated 26.2.1992 but the stay was granted only to the effect that the persons from the general cadre should not be transferred to Storekeeper/Senior Clerk (Stores). It is submitted before me that if the interim relief granted earlier is confirmed to the above effect, the same would meet with the ends of justice. Mr. Mankad, ld. AGP appearing for the respondents has also stated that as per the Government instructions, the persons from the general cadre would not be transferred in the post of Storekeeper/Senior Clerk (Stores). In this view of the matter, I hold that under the order of the Court, while passing the interim relief on 3.4.1992, the position which was prevailing then, would continue. Rule is made

absolute to this extent. The petition stands disposed of accordingly with no order as to costs.

rmr. [K.A. Puj, J.]